IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.M.C.No.6688-90/2005

How Yih Chyun & Ors. .....Petitioner
! through: Mr.C.Mukund and Mr.Arvind Jain, Advocates.

VERSUS

$ State & Anr. .....Respondent
^ through: Mr.Manoj Nagar, Adv. for R-2/ Complainant.
Mr.Baldev Malik, Adv. for State.

% **D**ATE OF DECISION: 08-08-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J. (ORAL)

1. Respondent No.2 had filed a complaint under Section 138 read with Section 141 of the NI Act seeking prosecution of M/s. ECON Engineering Pvt. Ltd. and its 3 Directors as also the authorized signatory of the company.

2. First petitioner was impleaded as accused No.4. Second petitioner was impleaded as accused No.2. Third petitioner was impleaded as accused No.5.

3. Pertaining to accused No.2 and 4 i.e. petitioner No. 1 and 2 there are no averments whatsoever in the complaint.

4. Learned counsel for respondent No.2 fairly concedes that he is unable to point out even a single word in the complaint where reference has been made to accused No. 2 and accused No. 4.

5. Qua accused No.5 averments are to be found in para 3 and para 4 of the complaint which reads as under:-

> "3. That towards the part discharged of their contractual liability/debt payable in money, arising out of the hiring charges for the crawler cranes hired by the accused No.1 from the complainant, the accused No.3 and 5 drew and tendered on behalf of accused No.1, to the complainant, the following cheque, inter alia, on an account maintained by their banker i.e. the Hongkong and Shanghani Banking Corporation Limited, 28, Kasturba Gandi Marg, New Delhi – 110001.
>
> | Cheque No. | Date | Amount |
> |---|---|---|
> | 577129 | 20.2.2003 | 6,00,000/- |
> | | Total | 6,00,000/- |
>
> 4. That the above cheque was tendered and delivered by the accused No.5 on behalf of the accused No.1 to the complainant at his office at Delhi, towards the part discharge of a legally enforceable and unequivocally admitted contractual liability, payable in money arising out of the hiring charges for the crawler cranes hired, rendering the accused liable to honour the cheque issued by him in consideration thereof."

6. Least what is required by law to be stated against a Director of a Company, in a complaint under Section 138 of the NI Act, is that he was incharge and was responsible for conduct of

business of the company.

7. In the absence of any allegation in the complaint against accused No.2 and accused No. 4, summoning order viz-a-viz said accused is hereby held to be faulty and without jurisdiction. Viz-a-viz accused No.5 i.e. petitioner no.3, in para 3 and para 4 of the complaint specific averments have been made that he along with accused No.3 tendered, on behalf of accused No.1, 2 cheques which have formed the subject matter of the complaint. Qua him, further averment has been made in para 4 that he i.e. accused No.5 (petitioner no.3) tendered the cheques to the complainant.

8. In that view of the matter the petition which challenges the summoning order against the petitioners stands disposed of quashing the summoning order and the complaint against petitioner No.1 and 2. The complaint and the summoning order qua petitioner No.3 is affirmed.

9. Copy of this order be supplied dasti to learned counsel for the parties on payment of usual charges.

August 08, 2007 **PRADEEP NANDRAJOG, J.**
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